

- 4 -

Remarks

The Examiner objected to the amendment filed 1/22/03 as introducing new matter to the disclosure. The Examiner states that the specification and original claims require a "waterproof" material however the claims now require a "moisture impervious" sheet. The Examiner states that "moisture impervious" is not the same as "waterproof" as moisture can refer to liquids other than water.

The earlier filed amendment sought to distinguish over previously cited references which taught non-continuous (i.e. perforated) plastic sheet material as a lower member which could be characterized as waterproof while not being moisture impervious. In other words, the plastic material would itself be relatively unaffected by water however it would not prevent moisture in the form of liquid water or water vapour from affecting the waferboard upper member.

In view of the Examiner's concern as to "moisture" possibly referring to other than water, Applicant has amended claim 1 to refer to water rather than simply moisture. As a practical matter, Applicant would expect any material that is impermeable to water to also be impermeable to other liquids as long as the material is not reactive with those liquids.

Applicant respectfully submits that the originally filed specification both implicitly and explicitly discloses a moisture impervious continuous sheet material. It does so implicitly in the drawings which show a continuous sheet which has no holes through it and in the specification which defines the lower member as being waterproof and as being plastics material. It does so explicitly by identifying "System Platon" as a suitable lower material. Brochures describing "System Platon" were supplied to the Examiner by way of information disclosure statement. Accordingly the "System Platon" material is incorporated by reference into the application. As its properties were well known at the time the application was filed. There is ample support in the specification for a dimpled sheet material that is moisture impervious at least insofar as the moisture is water.

The Examiner objected to the specification as failing to provide proper antecedent basis for the lower member being a continuous sheet. As set out above, Applicant respectfully submits that there is ample support in the specification for the lower member being a continuous sheet.

The Examiner rejected claims 1, 3, 7, 9 and 10 as being anticipated by U.S. Patent No. 5,572,842 (Stief). Applicant has carefully considered the Stief reference and notes that it discloses an interlocking dimpled sheet material and a method for making a hollow floor wherein the sheet is placed on underflooring and the floor is poured thereon. Applicant respectfully submits that this would not yield interlocking panels and in fact defeats an important aspect of Applicant's invention, which is to provide individual panels which can be interlocked to produce a subfloor. Practicing what Stief teaches would produce one panel the size of the entire floor and would provide no mechanism for interlocking adjacent edges of adjacent panels.

Claim 1 of the present invention is therefore patentably distinguishable over Stief on the basis that the panels have an interlocking assembly for interlocking adjacent edges of adjacent panels so as to prevent relative vertical movement therebetween. Stief has no such arrangement. The lower member of Stief has provision only for lateral rather than vertical interlocking. Once the

- 5 -

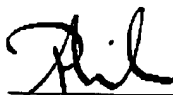
upper member is poured, the resulting structure no longer has any interlocking capabilities, be they vertical or horizontal.

The Examiner has rejected the remaining claims on the basis that it would be obvious (according to the Examiner) to replace the poured material in Stief with waferboard. In Applicant's respectful submission this is unsupportable as waferboard is not a substitute for a poured material in that waferboard cannot be poured. Furthermore, replacing the upper layer of Stief with waferboard would require a single waferboard sheet the size of the floor in lieu of a poured sheet the size of the floor. This would not yield interlocking panels which can be joined to make up a floor. In fact this is more analogous of the prior system of placing plywood sheeting over the dimpled subfloor material rather than forming and subsequently joining individual unitary panels.

For the reasons set out above, Applicant submits that the claims, as amended, are neither anticipated by nor obvious in view of the cited references and accordingly define patentable subject matter. Applicant respectfully invites the Examiner to reconsider her position with a view toward allowance of the present application.

Respectfully submitted,

ROBERT K. SMITH



Peter Milne
Registration No. 34,534

PM:hcu

Enc.

[TOR_LAW5398089\1]